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ELI LILLY AND COMPANY

By \_\_\_\_\_

Date \_\_\_\_\_

**PATENT APPLICATION**  
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Applicant: CONNER Scott Eugene

Group Art Unit:1621

Serial No.: 10/542579

Filed: February 10, 2004

Examiner:OSULLIVAN, PETERG

PCT Nat'l Entry Date (if applicable): July 15, 2005

For: SULFONAMIDE DERIVATIVES AS PPAR MODULATORS

Docket No.: X16180

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**INDICATED IN NOTICE OF ALLOWANCE**  
**(37 C.F.R. § 1.705)**

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants submit herewith this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. §1.705 in the above-referenced allowed application accompanied by the requisite fee under 37 C.F.R. § 1.18. Applicants believe that no additional fees are due with the filing of this Request. However, if any fees are required, Applicants hereby authorize the Commissioner to charge such fee, or credit any overpayment in fees, to Deposit Account No. 05-0840.

Applicants received the Notice of Allowance and Fees Due from the U.S. Patent and Trademark Office, mailed on **June 24, 2009**, which stated that the Patent Term Adjustment under 35 U.S.C. §154(b) to date is 717 days. By this paper, Applicants hereby petition the U.S. Patent and Trademark Office for reconsideration of the patent term adjustment calculation to **1031** days based on the facts provided

herein. This request is submitted in view of the decision by the U.S. District Court decision in Wyeth v. Dudas (D.D.C. 2008) on September 30, 2008.

The facts supporting this filing are as follows:

The correct period of adjustment of patent term due to examination delay, at the time of the transmittal of the Notice of Allowance, under 37 C.F.R. §1.702(a), the period as specified in 37 C.F.R. §1.702 (a)-(c), less the reduction period of adjustment as specified in 37 C.F.R. §1.704, is calculated as follows from the Patent Term

Adjustment History of record in PAIR for the instant application:

37 C.F.R. §§ 1.703(a) – (c):	719	days (USPTO delay)
37 C.F.R. § 1.704:	2	days (Applicant delay)
Total 1.702(a):	717	days

According to the provisions of 37 C.F.R. § 1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years after the date on which the application was filed. Applicants are entitled to this adjustment because none of the provisions described in 37 C.F.R. § 1.702(b)(1)-(5) apply to the instant application. The amount of Adjustment will depend on the date that the instant application is issued as a patent and should be counted from August 14, 2005, subtracting only time legitimately attributable to applicant delay after the period for reply to the Issue Fee Notification sent concurrently with the Notice of Allowance mailed on June 24, 2009. Therefore, the number of additional days under 37 C.F.R. § 1.702(b) should sum to a total of 1031 days of PTA and is calculated as follows:

37 C.F.R. §1.702(a) through (c) is the sum of the following periods:		
37 C.F.R. §1.702(a)	717	days
37 C.F.R. §1.702(b)	314	days
37 C.F.R. §1.702(c)	0	days
37 C.F.R. §1.702(d)	0	days
37 C.F.R. §1.702(e)	0	days
Total 1.702 § (a)-(c):	1031	days

In summary, Applicants respectfully request that the Patent Term Adjustment be increased from that reported on the Determination of Patent Term Adjustment

under 35 USC § 154(b) to 1031 days. Applicants additionally request any further patent term adjustment based on the issue date of the patent as recalculated by the U.S. Patent and Trademark Office, based on the notification.

The patent is not subject to a terminal disclaimer.

(iv) (B) There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

Applicants note that the grant of the patent will necessarily be more than three years after the filing date. Applicants hereby preserve the right to timely request correction of the patent term adjustment, in accordance with 35 USC §154(b)(1)(B), to add the adjustments attributable to in 37 C.F.R. §1.705 (a)-(c) with those attributable to 37 C.F.R. §1.703 (a)-(f), if applicable after issuance. *Wyeth v. Dudas*; Case 1:07-cv-01492-JR (D.D.C. 2008).

In accordance with the facts stated above, Applicants respectfully request review of the determination of patent term adjustment under 35 USC § 154(b).

Respectfully submitted,

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